

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PETRINA MAGLINGER,

Plaintiff,

vs.

Case No. 2005-802-NF

STATE FARM INSURANCE
COMPANY,

Defendant.

OPINION AND ORDER

This matter is before the Court on defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

I.

Plaintiff alleges that she sustained injuries as the result of a February 3, 1995 automobile accident and that defendant was her No-Fault insurer during the relevant time. She alleges that she required medical attention, as well as household assistance, replacement services, attendant care, and other services due to the physical disability she sustained as a result of the accident. However, she alleges that defendant has breached the parties' insurance contract by failing to tender No-Fault Personal Injury Protection ("PIP") benefits upon being presented with documentation of the same. Among other things, she seeks \$45.00 per hour for attendant care. Pursuant to a July 11, 2005 written order, the Court granted defendant's motion for partial summary disposition, which bars plaintiff from claiming any benefits prior to February 28, 2004.

In the motion at hand, defendant contends that on March 25, 2002, the parties entered into a settlement regarding a suit for first-party No-Fault benefits. Defendant maintains that the



present suit for attendant care benefits was filed on February 28, 2005 notwithstanding that plaintiff has not necessitated or received attendant care since the date of the accident. Moreover, defendant submits that plaintiff's disabled boyfriend is allegedly performing the requested services.

Conversely, plaintiff argues that she has been receiving necessary attendant care arising from the catastrophic injuries she sustained as a result of the subject accident. She asserts that defendant relies on the testimony of professionals who did not treat her with respect to the accident and/or are not qualified to provide an expert opinion regarding the causation between the accident and her resulting symptoms.

II.

In reviewing a motion brought under MCR 2.116(C)(10), the trial court must consider the pleadings, as well as any affidavits, depositions, admissions, and documentary evidence submitted by the parties. The evidence should be construed in the light most favorable to the party opposing the motion. The motion should be granted if the evidence establishes that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. MCR 2.116(G)(4)-(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). It is not sufficient for the non-movant to promise to offer factual support for his position at trial. *Smith, supra*, at 457-458 n 2. Instead, the adverse party must produce evidence demonstrating that there is a genuine issue of material fact. MCR 2.116(G)(4).

III.

Generally, an insurer is liable to pay PIP benefits for "...accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle..."

MCL 500.3105(1). Such benefits are due without regard to fault. MCL 500.3105(2). More specifically, an insurer is liable for the following expenses under MCL 500.3107(1):

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation...

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured...

(c) Expenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or his or her dependent.

The No-Fault Act requires proof of a causal connection between the alleged injury and the motor vehicle accident. *Shellenberger v Ins Co of North America*, 182 Mich App 601, 603; 452 NW2d 892 (1990).

IV.

After careful consideration, the Court is persuaded that the totality of evidence fails to demonstrate that plaintiff is entitled to PIP benefits pursuant to MCL 500.3107(1).

By way of example, the evidence shows that, several years prior to the subject accident, plaintiff treated with John C. Pollina, M.D., for a back injury due to a slip-and-fall accident at work. See Dr. Pollina's deposition at 5-7. He also treated plaintiff for several years after the accident. Dr. Pollina testified that a closed-head injury had never been discussed. *Id.* at 20. He opined that plaintiff does not require attendant care. *Id.*

In opposition to Dr. Pollina's testimony, plaintiff submitted the deposition of Eric C. Amberg, Ph.D., which indicated that plaintiff requires 24-hour attendant care. See Dr. Amberg's 1-27-06 deposition at 12. However, he was unable to state, with a relative degree of medical certainty, that plaintiff requires such care as the result of the accident at issue. *Id.* at 18. The

Court also points out that Dr. Amberg gave plaintiff a neuropsychological examination and subsequently testified that Dr. Pollina had failed to diagnose the closed-head injury. *See* Dr. Amberg's 3-3-06 deposition at 23-24. However, the Court questions whether a non-medical doctor is qualified to dispute the diagnosis made by a board-certified medical doctor.

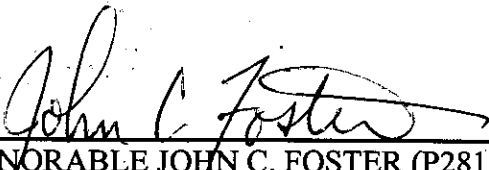
After thoroughly reviewing the above depositions together with the other evidence submitted, the Court finds that plaintiff has failed to establish the requisite causal connection between the claimed injuries and the subject accident. *Shellenberger, supra*. Accordingly, defendant is entitled to the entry of summary disposition pursuant to MCR 2.116(C)(10). *Smith, supra*.

V.

For the reasons set forth above, defendant's motion for summary disposition, pursuant to MCR 2.116(C)(10), is GRANTED. Pursuant to MCR 2.602(B), a judgment shall enter that is consistent with this *Opinion and Order*.

In compliance with MCR 2.602(A)(3), the Court finds that this decision resolves the last pending issue. This case shall close upon the entry of judgment.

IT IS SO ORDERED.


HONORABLE JOHN C. FOSTER (P28189)

JCF/sw

DATED: May 16, 2006

Cc: CARL L. COLLINS
18100 Meyers Road, Ste. 392
Detroit, MI 48235

NATHAN J. EDMONDS
94 Macomb Place
Mt. Clemens, MI 48043